Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

GEORGE WILLIAM BRAWLEY,

Petitioner,

v.

THE STATE OF COLORADO,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Colorado

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Petitioner has a constitutional right to bail in a capital case, pursuant to the Eighth Amendment to the Constitution of the United States and Article II, Section 19 of the Colorado Constitution, upon presenting evidence sufficient to support the affirmative defense of self-defense?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner asks that the Court issue a writ of certiorari to review the judgment of the Colorado Supreme Court in this case.

OPINION BELOW

The Supreme Court of Colorado entered an order denying an original petition pursuant to Colorado Appellate Rule 21. Said order is attached in the Appendix to this Petition at Exhibit A. The trial court entered findings, conclusions of law and an order on the record which has been transcribed and is attached in the Appendix to this Petition as Exhibit B.

JURISDICTION

The Supreme Court of Colorado entered an order on May 6, 1999, denying George William Brawley's Petition for a Writ pursuant to Colorado Appellate Rule 21. Colorado Appellate Rule 21(n), Exhibit B in the appendix to this Petition, does not allow a petition for rehearing when the Colorado Supreme Court declines to enter a rule or discharge same. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A., section 1257 and Rule 10(b) of the Rules of the Supreme Court of the United States. The latter provides that when a review on writ of certiorari may be considered, "when a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last

resort or of a United States court of appeals". U.S.Sup.Ct. Rule 10(b).

Pursuant to Rule 13 of the Rules of the Supreme Court, this petition is timely filed within 90 days after entry of the judgment of a state court of last resort, specifically the order entered on May 6, 1999 by the Colorado Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S. Const. Amend. VIII.
>
> All persons shall be bailable by sufficient sureties pending disposition of charges except: (a) For capital offense when proof is evident or presumption is great. Colorado Const. Art. II, § 19.

CONCISE STATEMENT OF THE CASE

On or about March 28, 1999, the Petitioner, George W. Brawley (hereinafter "Defendant"), was arrested on suspicion of murder. An Information was filed with the Court on March 31, 1999, formally charging Defendant with first-degree murder, pursuant to C.R.S. § 18-3-102. At that time, Defendant requested bail be set. The trial court would not hear any argument regarding bail at that time and set the matter over to be heard concurrently with the preliminary hearing on April 20, 1999.

On April 20, 1999, the Honorable Donald W. Marshall presided over a preliminary hearing and bond hearing.

Evidence was presented at said hearing that the Defendant, George Brawley, was physically threatened by the victim, Chester Rankin (hereinafter "Rankin"), prior to the alleged murder. According to Tresia Brawley's testimony, Rankin, who was her brother, was very intoxicated and after being shown to his guest room, began making lewd statements indicating that he intended to sleep with his sister. (App. 12-13, 35, 42). Testimony of Deputy Ronald Rusk confirmed said statements. (App. 80, 82). Tresia Brawley testified that immediately after Rankin made that statement, her husband told Rankin to leave the house and Rankin stated, "I'll take you right now, you motherfucker. You can't make me leave your house," and advanced toward the Defendant. (App. 13, 16, 18, 25, 35-36). Tresia stated that Rankin and the Defendant were approximately ten feet away from each other when she stepped in front of her brother and grabbed him by the shirt to stop him from advancing upon the Defendant. (App. 18, 25, 35-36). Tresia further testified that the Defendant again ordered her brother out of the house and the Defendant then left the room. (App. 19). Tresia further testified that when the Defendant reentered the room, she heard him tell Rankin to leave the house and Rankin responded by saying "I don't have to leave your house" and pushed past Tresia toward the Defendant, then she heard a gunshot. (App. 20, 38-39). According to the testimony of Detective John Williams, the two men were seven to ten feet apart when the gun was shot. (App. 99).

Further testimony was presented by Jerry Hankins, of the Byers Fire Department, and his wife, Carolyn Hankins, that Rankin had threatened to beat the hell out of Defendant. (App. 58, 61, 69-70, 72). Deputy John Egan testified that the Defendant had stated that Rankin threatened to kick his ass and that he had threatened him previously. (App. 75). Deputy Rusk testified that the Defendant had stated that Rankin kept threatening to beat him up, that he's too old to be beat up. (App. 82). Tresia Brawley had additionally testified that her brother, Chester Rankin, was a violent drunk and had just had stitches removed from his head that had been the result of a recent fight. (App. 40-43). Tresia further testified that her brother, Chester Rankin, was a taller, heavier and younger man than the Defendant. (App. 39-40). Detective Williams testified that a blood alcohol level of .26 was found in Chester Rankin, as well as methamphetamines. (App. 100). Deputy Egan testified that Tresia Brawley had advised him that Chester Rankin had an extensive criminal history. (App. 78).

Following said hearing of April 20, 1999, the Honorable Donald Marshall stated that, " . . . in resolving bail questions, the issues of defense, such as self-defense, are not to be resolved at the bail hearing". (App. 6). The trial judge further stated, "I'm not going to address affirmative defenses and it's not within the scope of this hearing . . . I think we're wasting a lot of time on issues that really are not germane to what we're trying to get done" (App. 46). Judge Marshall then denied the Defendant's motion to set bond. (App. 6).

The Defendant filed a Petition for Writ Pursuant to C.A.R. 21 on May 3, 1999. The Colorado Supreme Court

denied said petition in an order dated May 6, 1999. It is from this ruling that the Defendant seeks relief.

REASONS FOR GRANTING THE WRIT

1. COLORADO SUPREME COURT FAILED TO CONSIDER EVIDENCE OF SELF DEFENSE IN DETERMINING IF DEFENDANT WAS ADMISSIBLE TO BAIL.

Defendant has a constitutional right to bail, pursuant to the Colorado Constitution, Article II, Section 19, which reads:

> "All persons shall be bailable by sufficient sureties except for capital offenses, when the proof is evident or the presumption great".

This Court has held, "[o]ur Colorado Constitution grants a defendant charged with a capital offense the right to bail unless the district attorney meets the burden of establishing at the bail hearing that the 'proof is evident or the presumption great' ". *Lucero v. District Court*, 532 P.2d 955 (Colo. 1975). This Court went on to state in *Lucero* that, "[i]f evidence of the proper nature and kind is not presented by the district attorney, it is incumbent upon the court, looking to the guidelines laid down in . . . [section 16-4-105(1)(h)] and in the case of Stack v. Boyle, 342 U.S. 1, 72 S.Ct. 1, 96 L.Ed. 3 (1951), to set reasonable bail in compliance with our Constitution and the Eighth Amendment of the Constitution of the United States." *Id.*

The presumption of innocence is basic to our system of justice and the refusal to set bail, as exists in this case,

denies an accused of that presumption. *Coffin v. United States*, 156 U.S. 432, 15 S.Ct. 394, 39 L.Ed. 481 (1895). The loss of liberty to the Defendant if he remains detained prior to his trial date includes the fundamental liberty to move freely about the community, the ability to hold his employment and the opportunity to participate in his own defense. Such a resulting loss of liberty until the establishment of guilt is clearly unconstitutional.

The burden is on the prosecution to demonstrate a non-bailable case and the standard which the constitution requires before bail may be denied is *greater than probable cause. People ex rel. Dunbar v. District Court*, 179 Colo. 304, 500 P.2d 358 (1972); *Gladney v. District Court*, 188 Colo. 365, 535 P.2d 190 (1975).

This Court has held that the mere filing of an information or the production of evidence which would establish probable cause that the crimes charged were committed will not meet the Colorado constitutional standard for denying bail in capital cases. *Lucero, supra.*

In the herein matter, evidence was presented to support an affirmative defense of self-defense. However, the trial court stated that this was not a proper consideration for purposes of bail. (App. 6). The Defendant contends that said is an incorrect statement of the law.

The law in Colorado is that bail may only be denied when the "proof is evident or the presumption great". However, if the evidence demonstrates that the Defendant reasonably exercised his right to self-defense, then the presumption cannot be great that he is guilty of murder. This Court has previously considered evidence in a bond hearing regarding the issue of self-defense in

Gladney, supra. While this Court held in *Gladney* that the existence of an affirmative defense, i.e., self-defense, was a question of fact which could not be reversed, clearly it was this Court's intention that said evidence could be considered by the trial court and properly weighed with other evidence in determining .. the people met the burden case upon them by our Constitution.

Other courts have specifically held that self-defense must be considered in determining whether an accused charged with murder was entitled to bail, especially wherein evidence of self-defense is presented by sources other than the accused. *Ex Parte Kennedy,* 190 S.W.2d 825 (Tex. 1945). See also: *Ex Parte Cantu,* 117 S.W.2d 1102 (Tex.App. 1938) (where the evidence in a capital case raises some substantial or outstanding defense, and where same is reasonably well supported in the evidence, it is a bailable case); *Ex Parte Frey,* 187 P.2d 253 (Okl.App. 1947) (prisoner entitled to admission to bail under testimony of prisoner that he acted in self-defense); *Banks v. State,* 276 N.E.2d 155 (Ind. 1972) (as long as there is reasonable exercise of right of self-defense, there is also reasonable doubt as to guilt of accused).

Therefore, the trial court should have properly considered the evidence of self-defense in determining if bail should be denied pursuant to the Colorado constitutional standard, Article II, § 19.

Furthermore, the testimony of Tresia Brawley, the defendant's wife, cannot be said to come wholly from an interested witness, because she is also the sister of the deceased. *Ex Parte Kennedy, supra.*

Based on the evidence presented at the hearing, proof is not evident and the presumption of guilt is not great in that grounds for the use of physical force in defense of a person, pursuant to C.R.S. § 18-1-704, were presented. It was this evidence that Judge Marshall would not consider. In denying certiorari, the Colorado Supreme Court decided this matter in conflict with the Indiana and Texas courts of last resort, raising a compelling reason for this Court to grant certiorari herein. U.S.Sup.Ct. 10(b).

2. HAVING DEMONSTRATED THAT THE PROOF IS NOT EVIDENT AND THE PRESUMPTION NOT GREAT, THE DEFENDANT FURTHER PRESENTED OTHER EVIDENCE DEMONSTRATING HE WAS NOT A FLIGHT RISK, NOR A DANGER TO SOCIETY.

Once having demonstrated that he is entitled to bond, Defendant introduced evidence in accordance with C.R.S. § 16-4-105(1). Defendant introduced evidence that his roots are deeply established in the community of Adams County, Colorado, that he has a reputation for good character in the community, and that he is not a flight risk without a strong connection to said community. (App. 52, 62-63, 106-107). Evidence was presented that he has been residing in Byers, Colorado with his wife, Tresia Brawley, for the past twenty-five (25) years. (App. 51). Evidence was also presented that he has been employed with the United Road Services or Schroeder Auto Carriers for the past eight years earning $50,000 per year. (App. 49-51, 104-105). The Defendant's employer, Dale Schroeder, testified that Defendant's job was being

held for him pending release and that he would assist in posting bail in any way he could. (App. 105, 107).

Secondly, Defendant established that he did not pose a danger to the community if he were to be released on bail. Evidence was presented that Defendant has no past criminal history. (App. 52).

That pursuant to *Lucero, supra,* the purpose of bail is to insure defendant's presence at time of trial and not to punish defendant before he has been convicted.

That pursuant to *Palmer v. District Court,* 398 P.2d 435 (Colo. 1965), the amount of bail should not be more than will be reasonably sufficient to prevent evasion of law by flight or concealment, and it should be reasonably sufficient to secure prisoner's presence at trial.

In the case at hand, it is clear that the Defendant is currently being punished by the denial of bail in an effort to keep him in custody, without the opportunity of allowing him to assist in the preparation of his own defense.

CONCLUSION

The Court should grant a writ of certiorari, vacate the decision below, and remand this case for reconsideration in accordance with the applicable Colorado decisions and decisions of the Texas and Indiana courts of last resort, as well as any other decisions of this Court.

Respectfully submitted,

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(Admitted to this Court on
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Dated: July 30, 1999

APPENDICES

SUPREME COURT, STATE OF COLORADO
CASE NO. 99SA154
ORIGINAL PROCEEDING, DISTRICT COURT,
ADAMS COUNTY, 99CR688

ORDER OF COURT

IN RE:

THE PEOPLE OF THE STATE OF COLORADO,
Plaintiff,

v.

GEORGE WILLIAM BRAWLEY,
Defendant,

Upon consideration of the Petition for a Writ Pursuant to C.A.R. 21 filed in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Petition shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 6, 1999. (Seal)

cc:

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DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO
Criminal Action No. 99CR688, Division F

REPORTER'S TRANSCRIPT

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

GEORGE W. BRAWLEY,

Defendant.

The hearing in this matter commenced on April 20, 1999, before the HONORABLE DONALD W. MARSHALL, JR., judge of the District Court.

APPEARANCES:

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* * *

[p. 8] the Colorado – State of Colorado and keep working.

There's no criminal record of George Brawley. No criminal record's been brought up, no evidence of any criminal record. We urge you, Your Honor, that you set an appropriate bond. We would ask that you set a bond at $50,000. If you bind this case over for trial, we would ask that you enter that order. Thank you.

THE COURT: The hearing conducted before the Court today deals with two issues. First, whether the probable cause exists and so as to bind the defendant over for arraignment on the charge of first-degree murder. The second is whether bail should be allowed by the Court. If probable cause does exist, then the charge must be bound over for trial.

The standard of law is that probable cause exists where evidence presented is sufficient to cause a person of ordinary prudence and caution to believe that the defendant committed the crime. It is not a question of whether or not it is more probable or less probable but rather the evidence as just indicated is sufficient in quantity and character to cause such a person to believe the crime was committed by the defendant.

Under the law, the Court is obligated to view the evidence in the light most favorable to the prosecution. It is not the Court's prerogative to accept [p. 9] the defendant's version of the facts over legitimate inferences which can be drawn from the prosecution's evidence.

It's not the Court's prerogative at preliminary hearing to resolve issues of disputed fact so long as one

reasonable version of the facts would show that the defendant committed the crime and would be sufficient to meet the test just stated.

We've spent a lot of time unnecessarily addressing alternate issues of divergence of fact today. In addressing these questions, the Court is not to resolve disputes in testimony by making credibility determinations except where the testimony is implausible or incredible as a matter of law. Absent such a circumstance, I'm obligated to draw inferences from the evidence which are more favorable to the prosecution.

Matters of defenses, including the defense which seems to be implied in this case of self-defense, are not to be resolved by the Court at a preliminary hearing. They are to be reserved for determination at trial.

The evidence in this case shows without any substantial conflict that the victim died of a gunshot wound inflicted by the defendant. The gunshot wound was a blast from a shotgun at very close range. The evidence shows, and without having to go to the extreme of viewing [p. 10] evidence in the light most favorable to the People, that before shooting the victim that the defendant walked from the family room, having argued with the victim, procured a shotgun, walked back to the family room/kitchen area and then fired at the victim inflicting the mortal wound.

There was no question that a reasonable juror could conclude that the defendant made a decision to shoot the victim, left to procure a weapon, returned with a weapon,

and immediately shot the victim. That certainly is evidence of premeditation or deliberation as exists in the first-degree murder statute.

The law with reference to deliberation is that if one forms the purpose to kill another, premeditates upon that idea before performing the act and then performs the act, he is guilty of murder in the first degree. This is not matter of how short the time may have been between the formulation of purpose and the execution.

No particular amount of time is needed to pass in order to establish deliberation and premeditation. The important thing is that there must be at least enough time to permit one thought to follow another.

The law does not demand that the defendant shall have premeditated for any period of time but that the defendant shall have committed the act deliberately and after premeditation.

[p. 11] Certainly the evidence would support that conclusion in this case; therefore, the Court will find that probable cause does exist to bind this case over on the charge of first-degree murder.

Addressing the question of whether the standard of proof evidence/presumption great has been met, as is provided in C.R.S. 16-4-101, for the determination of whether bail should be allowed in a capital case, the law provides that bail should be denied when the circumstances disclosed indicate a fair likelihood that the defendant is in danger of a jury verdict of guilty on the charge of first-degree murder. It takes more than probable cause,

it takes less than the proof required for a conviction on trial.

Again, in resolving bail questions, the issues of defense, such as self-defense, are not to be resolved at the bail hearing. This court finds that the standard of proof evidence, presumption great, has been sustained by the People in this case, therefore, bail will be denied as provided by 16-4-101.

This case will be bound over for arraignment in this division of the district court.

Ms. Alatore, we need to set an arraignment date.

THE CLERK: May 17th at 8:30.

MR. KINCAID: Your Honor, I need to clear that

* * *

DISTRICT COURT, ADAMS COUNTY, STATE OF COLORADO
Criminal Action No. 99CR688, Division F

REPORTER'S TRANSCRIPT

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

GEORGE WILLIAM BRAWLEY,

Defendant.

ORIGINAL

The motions hearing in this matter commenced on April 20, 1999, before the HONORABLE DONALD W. MARSHALL, JR., judge of the District Court.

The following transcript is an excerpt of the testimony of said hearing, as per the request of ordering counsel.

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[p. 3] MORNING SESSION, APRIL 20, 1999

THE COURT: Ms. Brawley if you'll step forward, please.

Over here.

TRESIA BRAWLEY,

a witness herein, being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: All right. Please be seated.

DIRECT EXAMINATION

BY MR. MCCOY:

Q. Ma'am, would you state your name, please.

A. Tresia Brawley.

Q. How do You spell your last name?

A. B-R-A-W-L-E-Y.

Q. Are you married to George Brawley?

A. Yes, I am.

Q. Ma'am, I'm going to ask you to pull that microphone close to your face so that everybody in the courtroom can hear your responses.

Were you with George Brawley on March 27th, 1999, at your home at 3120 Calhoun-Byers Road?

A. Yes, I was.

Q. Is that in Adams County, Colorado?

A. Yes.

[p. 4] Q. Had you been, before ten o'clock that night, at the American Legion hall in Byers, Colorado?

A. Yes.

Q. What was the purpose for you and George Brawley being at the American Legion hall in Byers?

A. It was an appreciation supper.

Q. For whom?

A. For charitable events that happened around Byers, the people that help at that, they give them an appreciation supper.

Q. Were you and your husband there together that night?

A. Yes.

Q. Was your brother, Chester Rankin, with you that night?

A. Yes.

Q. How long were – did the three of you arrive at the Legion hall together that night?

A. Yes.

Q. And did you leave the Legion hall together that night?

A. Yes.

Q. What time did you and your husband and your brother get to the Legion hall that night?

A. Somewhere probably between 6 and 6:30.

[p. 5] Q. How long did you stay at the Legion hall?

A. Two or three hours.

Q. What did you do while you were there?

A. We ate supper and played bingo and visited.

Q. Was there any problem between your brother Chester Rankin and your husband George Brawley while you and they were at the Legion hall that night?

A. No.

Q. They did not argue between themselves?

A. Not that I'm aware of.

Q. Were you there present with them the entire time that all three of you were there?

A. Yes.

Q. What time did you leave?

A. I would say somewhere around 9:30, going on 10.

Q. So you were there for three or three and a half hours, approximately?

A. Approximately.

Q. Did you all ride to your home at 3121 Calhoun-Byers Road in the same car?

A. Yes.

Q. Was there any arguing in the car between your and your husband?

A. No.

Q. When you got home, did an argument start between [p. 6] your brother and your husband?

A. Yes.

Q. Explain that please, ma'am.

A. My husband had went to lay down on the couch in the family room. I took my brother and showed him where he was going to sleep that night.

Q. You took –

A. – Chet.

Q. You took Chet into where?

A. The bedroom where he was going to spend the night.

Q. All right.

A. He followed me back out and he said, I don't have to stay in that bedroom, I can go to yours.

Q. He said that to whom?

A. To me.

Q. Had he ever said anything like that to you before?

A. Not in words like that, no.

Q. In any kind of words, ma'am?

A. No. He's just been where he's called me his little sweetie and things like that when he has, a couple weeks before then.

Q. Was Ches – did he appear to you to be joking with you when he said that?

[p. 7] A. Not really joking, no.

– Q. What –

A. It wasn't a joking manner.

Q. I'm sorry?

A. It wasn't a joking manner.

Q. And his – do you remember what his exact words were to you?

A. Just that he didn't have to stay in that bed, he could go to mine.

Q. All right. Did he make any physical move toward you?

A. No. That's when George got up and told him to leave the house.

Q. Where was George when Chet made that comment to you?

A. Oh, from me to the wall over here.

Q. How many feet away?

A. Ten feet.

Q. Was your husband standing up or sitting down when Chet made that comment to you?

A. He had been laying on the couch.

Q. And where was Chet – was Chet standing at that time?

A. Yes.

Q. Where was he when he made that comment to you?

[p. 8] A. We were walking from the bedroom toward the dining room.

Q. Were you in the hallway?

A. I don't have any hallways.

Q. And the couch that your husband was lying on was in the living room?

A. The family room.

Q. All right.

MR. MCCOY: May I go to the witness, Your Honor?

THE COURT: Yes.

Q. (By Mr. Mccoy) Mrs. Brawley, I'm going to show you a diagram and I'm going to ask you whether you recognize what that drawing shows.

A. Yes.

Q. While it may not be to scale, does that appear to you to be a true and accurate diagram of what the inside of your house looks like at 3120 Calhoun-Byers Road?

A. Yes.

MR. MCCOY: Your Honor, I'm going to ask that the Court accept People's Exhibit 1.

THE COURT: Any objection?

MR. KINCAID: No objection to the exhibit for purpose of illustrating the home and location, Your Honor.

The wording "BC" and "AS," various depictions of [p. 9] testimony will have to tie-in before that is admissible, so therefore, basically I object to using it for showing any of the facts of the case at this time; but to show and illustrate the layout of the house and to utilize that with the witnesses, I have no objection.

THE COURT: The Court will accept Exhibit 1 for the purposes of explaining testimony here today in showing the diagram, the layout of the house.

MR. MCCOY: Thank you, Your Honor.

Q. (By Mr. Mccoy) Mrs. Brawley, I wonder if you could step to the diagram and show us where you and your brother were when he made the comment to you about, "I don't have to stay in this bed," and where your husband was lying.

MR. KINCAID: Your Honor, may I approach so I can see the diagram?

THE COURT: Yes.

THE WITNESS: My husband was laying here (indicating).

Q. (By Mr. McCoy) You're going to have to keep your voice up, Ms. Brawley, so everybody can hear you.

A. My husband was lying here on the couch and we were walking from the bedroom through here –

Q. Okay.

[p. 10] A. – when he was making the comment.

Q. Okay. You can take your seat again. Thanks.

Did your brother threaten you in any way, ma'am?

A. No, he didn't threaten me.

Q. Did he threaten your husband?

A. Yes, he did.

Q. How did he threaten your husband?

A. When George told him to leave his house he said, "I don't have to." He says, "I don't have to, you motherfucker. This is my sister's house, too, and you can't make me leave."

Q. All right. What was your brother Chet wearing the time, Mrs. Brawley?

A. He was wearing a shirt and a pair of jeans.

Q. Can you – were they blue jeans?

A. Yes.

Q. Do you know what brand?

A. Rustlers, I think.

Q. Can you describe the shirt, please.

A. Blue and white striped shirt – or white with striped shirt, I believe.

Q. A white with blue stripes shirt?

A. I think so.

Q. Do you know what it was made of?

A. Cotton, polyester.

[p. 11] Q. Was it a dress shirt or a sports shirt?

A. Dress shirt. It wasn't a sports shirt.

Q. Long sleeve or short sleeve?

A. Short sleeve.

Q. And it was white with blue stripes, did you say?

A. I think so.

Q. Like pinstripes or wide stripes?

A. Small stripes.

Q. All right. Whose shirt was that?

A. It was my husband's shirt.

Q. How did it come to be that your brother, Chet, was wearing your husband's shirt?

A. I gave it to him to wear that night.

Q. All right. Where was Chet when he said, "I don't" – when he told your husband, "I don't have to leave this house. It's my sister's house, too"?

A. We were about in the middle of the dining room.

Q. In terms of distance, how far away was Chet from George?

A. I don't understand.

Q. How far away would you say that that Exhibit board is from you right now, Mrs. Brawley?

A. Ten feet.

Q. All right. Using that as a gauge, and assuming that's roughly 10 feet, can you tell us how far away [p. 12] Chet was from Georqe when Chet said, "I don't have to leave this house. It's my sister's house too"?

A. Well, George had just walked past us and Chet was moving forward, toward the kitchen, and I had a hold of Chet telling him to calm down and stop it and he said he didn't have to.

Q. Was he moving toward your husband?

A. Yes.

Q. Did he push his way past you to reach your husband?

A. He stopped for a little bit and then he moved on a little more. I was still standing there holding him.

Q. Did your husband leave the room?

A. Yes.

Q. How long was he gone?

A. Not very long.

Q. Was your brother Chet sober that night?

A. No.

Q. Was your husband sober that night?

A. No.

Q. Were you sober that night?

A. I wasn't sober. I wasn't drunk.

Q. Were you under the influence of alcohol?

A. I had been drinking, yes.

Q. Did your husband, George, respond to your [p. 13] brother Chet when Chet said, "I don't have to leave the house"?

A. He told him: Yes, get out of his house.

Q. Was it at that point that George left the room?

A. Uh-huh, yes.

Q. And he was gone for how long?

A. Not very long.

Q. Did he move quickly out of the room or at a normal pace?

A. I really – I really don't know.

Q. Ms. Brawley, do you remember seeing your husband George leaving the room fairly calm?

A. No.

Q. Do you remember telling anybody after the shooting that your husband George calmly got up and walked out of the room?

A. No.

Q. Was your husband George gone from the room for more than one minute?

A. I wouldn't say so.

Q. Was he gone from the room for more than 30 seconds?

A. I don't know.

Q. Did your brother Chet follow George when George left the room?

[p. 14] A. He was still standing there with me.

Q. Did he follow George when George left the room?

A. He couldn't follow him because I was standing there in front of him holding him back.

Q. All right. When George came back into the room, you were still holding your brother; is that correct?

A. Yes.

Q. What happened at that point, Mrs. Brawley?

A. I heard George tell Chet to go home – to leave the house again, to get out.

Q. Did Chet respond to that demand by George for Chet to leave?

A. He said, "I don't have to leave your house."

Q. How far away were they apart from each other at that time?

A. George was walking around the corner when he told him to leave the house and Chet was pushing past me, and I'd say about as far away from here as the board.

Q. All right. So you were still holding on to your brother at that time?

A. Uh-huh, yes.

Q. Did George have a gun in his hand at that time?

A. I never did see the gun.

Q. Did you hear the gun?

A. I heard the gun.

[p. 15] Q. Tell us about that.

A. George had told him to leave and he said he didn't have to leave and then he was pushing past me and was off to the side, I guess he shoved past me, and then I heard the gun go off.

Q. Were you in the kitchen at that time?

A. I was standing right beside the bar.

Q. And the bar is right here on the left side of the kitchen on this diagram; is that correct? And your brother Chester was somewhere in this neighborhood in the dining room; is that correct?

A. No.

Q. Where was he?

A. We were both over toward the bar.

Q. So your brother Chet was standing on this side – on the left side of the bar?

A. No, we were both basically in front of the bar.

Q. In the kitchen area?

A. No.

Q. Why don't you show us.

A. Over in here (indicating).

Q. Okay. And where was George at that time?

A. He had come around the corner here (indicating).

Q. All right. Thanks. You can take your seat again.

[p. 16] You were in the kitchen when the shot rang out; is that right, Ms. Brawley?

A. I was standing at the side of the bar or I was right at the side of the bar.

Q. You were no longer attempting to hold your brother Chet away from George, correct?

A. I had just got away from him and shoved from him so, no, I was not holding him then.

Q. Well, are you saying, Mrs. Brawley, that Chet was moving towards your husband at the time that the shot rang out?

A. Yes.

Q. Do you remember talking to Detective Williams Sunday morning, the 28th of March?

A. I know I talked to somebody but I have no idea who it was.

Q. Did you tell Detective Williams that your brother Chet was moving towards George when the shot rang out?

A. Honestly that night I don't know what I said because I was just nervous. I know I had – I told somebody that Chet was trying to shove past me, George had told him to leave and he said he didn't have to and I don't know who I told that to.

Q. Didn't you tell Detective Williams that when [p. 17] George left the room you separated from Chet?

A. We had separated, yeah.

Q. And that you went – then went into the kitchen and you didn't see anything until you heard the shot ring out?

A. Well, I caught a view of George coming through the living room by the plant itself there and I saw him come around there.

Q. Okay. Was he walking or was he running?

A. I just got a glimpse of him. I don't know if he was walking, running, or what.

Q. Where were you standing when you got the glimpse of George coming into the living room?

A. Right here (indicating).

Q. Which way were you facing?

A. I was facing toward this direction (indicating).

Q. You were facing toward the back of the house.

A. Toward the kitchen, I saw George out of the side of my eye.

Q. So you saw George out of your right eye; is that what you're saying, as you were facing the back wall of the kitchen?

A. Yes. Not the back wall, I was facing off in this direction (indicating).

Q. So you were facing toward the back right corner [p. 18] of the kitchen. As you faced the back of the kitchen, you were facing the back right corner of the kitchen?

A. Basically, yes. I guess so.

Q. And that's when you saw your husband George out of the corner of your eye coming into view?

A. Yes.

Q. How long after that did you hear the shot?

A. Long enough – he told Chet to go home and Chet said he didn't have to.

Q. All right. And then you heard the shot?

A. Yes.

Q. So your back, then, was to your brother Chet at that time, correct?

A. I had turned a little when I heard Chet say he didn't have to leave. I had turned the other direction.

Q. Okay. How far away from your brother Chet were you when you heard the shot?

A. A couple of steps.

Q. How many feet?

A. Two feet, three feet. From here to here (indicating).

Q. But with your back turned pretty much both to your brother and your husband?

A. Pretty much.

Q. All right. Was there any other – were there [p. 19] any other statements made by your brother, Chet, to either you or George before you heard the shot?

A. Just that he didn't have to leave. We couldn't make him leave.

Q. And of course there was the statement that he didn't have to stay in the bed that you had assigned him, correct?

A. Yes.

Q. Did he ever threaten your husband George?

A. Yes. "I'll take you right now, you motherfucker. You can't make me leave your house."

Q. How far away from George was your brother when he said that?

A. Ten feet.

Q. Pardon me?

A. Ten feet.

Q. And that was before George went into the bedroom; is that correct?

A. Yes.

Q. And he did not repeat that after George came out of the bedroom, correct?

A. Repeat.

Q. "I'll take you right now, you motherfucker." He didn't say it again when George walked back after having been in the bedroom, correct

[p. 20] A. No.

Q. All right.

Do you know how much alcohol George had had – how many drinks he had that night or what he was drinking?

A. I don't know how many he had had, no.

Q. What was he drinking?

A. VO and water.

Q. VO and water?

A. Yes.

Q. And do you know, tell me, was there a bar setup where people were going to the bar to get drinks or were drinks being brought to the table?

A. It was a bar setting. You could go up and get your own.

Q. I'm sorry?

A. They didn't bring them to you.

Q. All right.

Who made the trips to the bar was it just you and your brother and your husband at one table?

A. No.

Q. Who else was at that table?

A. I really don't remember who we were sitting with.

Q. Do you know how many people were at that table?

A. Probably twelve people. It was a long table, a [p. 21] lot of people sitting at it.

Q. Was it like a banquet table?

A. Yes.

Q. Or rectangular?

A. Like a banquet table, like what you're sitting at there, longer.

Q. Only longer than this?

A. Yeah, two or three of them put together.

Q. Were you and your brother and your husband all seated on the same side of the table?

A. No, I was sitting next to my brother and George was off talking to other people.

Q. Your brother had never made any kind of comments to you before that night about sleeping arrangements; is that correct?

A. No, I didn't see my brother very much.

Q. Okay. And the only thing that he – I'm – I don't want to put words in your mouth. He did not mention anything physical directly to you, did he?

A. Just saying that he was going to – he could go to my bed.

Q. Okay. He did not explain, then, to you what he meant by that comment, did he?

A. No.

Q. And did he explain to your husband George what [p. 22] he meant by that comment?

A. No.

Q. Was this comment said in anger to you?

A. No.

Q. Did you feel as though your brother Chet was threatening you physically?

A. Not like he was going to go irate or anything like that, no.

Q. Did you feel a need to protect yourself from your brother Chet?

A. No.

Q. Ms. Brawley, is it true, or not, that your husband George has made statements in the past to the effect that there's not a jail that can hold him. Have you ever heard him say anything like that?

A. Never. Never.

Q. Have you ever heard statements – well, let me ask you – I'm going to re-ask that question.

Have you told anybody since the shooting that if George gets out he'll leave. He'll get out of here. He'll leave the area?

A. No.

Q. Are you certain of that?

A. I'm certain. He is not going to leave and go anywhere.

[p. 23] Q. Did you tell anybody since the shooting that if George gets out of jail he'll leave town and go to Texas?

A. No, only if his job allows him to. All's he wants to do is go back to work.

Q. Did you tell – did anybody ask you if George goes to Texas will you go with him?

A. No.

Q. And did you ever respond to that question about going with George?

A. No, I will stay here because my work is here. No.

Q. All right. And you are certain that you've told anybody that he would leave?

A. No.

Q. You're not certain or?

A. No, I have never said that he would leave.

Q. You're certain that you never told anybody that since the shooting?

A. Yes.

MR. MCCOY: All right. May I have a moment, please, Your Honor.

Q. (By Mr. Mccoy) Where was the shotgun normally that your brother was shot with?

A. Beside the bed.

Q. In the bedroom on the far right side of that [p. 24] diagram?

A. Yes.

Q. Do you remember telling Detective Williams, the following morning, Sunday morning, just a few hours after the shooting, that you didn't have any idea what the argument was about?

A. I don't know what I said. I – I don't know what I said.

Q. All right. Have you visited your husband since that morning – since that night rather?

A. Yes.

Q. How many times?

A. Twice.

Q. Do you remember telling the police that your brother Chet and your husband had always gotten along and had never gotten into arguments before?

A. I probably said that. They're what I consider getting along is –

Q. Let me see if I can make it a little easier for you, Mrs. Brawley. Did they – did they ever argue before that night?

A. They've had arguments, yes.

Q. Was it ever physical?

A. Not that I remember.

Q. And isn't it fair to say that had it gotten [p. 25] physical that you would remember?

A. I think so. I – I don't know what – I would think so.

Q. I mean, if they had gotten into a fight?

A. If they had got into a fistfight, yes, I would remember that.

Q. And you don't remember anything like that before?

A. No.

Q. Or you – and you don't remember anything like them coming close to getting into a fistfight before?

A. No. No.

Q. As soon as the shot – well, let me ask it a different way. What did you do when you heard the shot?

A. I turned around and saw Chet laying on the floor.

Q. Did you see your husband?

A. No.

Q. He was no longer in the room?

A. I didn't see him. I was looking at Chet.

Q. I'm sorry?

A. I was looking at Chet.

Q. When you stopped looking at Chet, did you see your husband?

A. No, I just heard him tell me call 911.

[p. 26] Q. Did he say anything else?

A. No, he just told me to call 911.

Q. Did you see your husband with the gun in his hand?

A. No.

Q. When you got up after looking at Chet, was your husband anywhere to be seen at that time?

A. I didn't see him.

Q. Do you know where he was?

A. No.

Q. What happened – now, your brother was wearing a shirt at the time that he was shot; is that correct?

A. I think so. I don't remember.

Q. When you saw him lying on the floor and you were looking at him, was he wearing a shirt?

A. I don't remember. I don't think he was. I don't really know for sure.

Q. Do you remember seeing a shirt with a hole in it after the shooting had occurred?

A. No.

Q. Did you call 911?

A. Yes.

Q. Did you call anyone else?

A. I – yes, I did. I called Jerry and Carol Hankins.

[p. 27] Q. Who are they?

A. They're members of a rescue squad. I didn't think I was getting through to 911 and I remember something that somebody on the rescue squad had told me, if you can't get through to 911, call the rescue squad and they could get things rolling.

Q. Did you get through to Carolyn Hankins?

A. Yes.

Q. Did you ask her to come to your house?

A. Yes.

Q. Did she come to your house with her husband Jerry?

A. Yes.

Q. Were they the first ones that got there?

A. Yes.

Q. Where was your husband, George, while you were making that phone call?

A. I don't know.

Q. Was he out of your sight from the time that you heard the shot until the time that the Hankinses got there?

A. I don't know. I heard him.

Q. How did you hear him? What did you hear?

A. Just telling me to call 911. That's –

Q. How far away was he from you when he was saying [p. 28] that?

A. I don't know.

Q. Do you know what room he was in?

A. No.

MR. MCCOY: Thanks very much, Mrs. Brawley.

THE COURT: Mr. Kincaid?

CROSS-EXAMINATION

BY MR. KINCAID:

Q. Good afternoon, Mrs. Brawley. Going on with what you just said, you do not know where George was when you heard the statement, "Call 911." Do you remember that?

A. Yes.

Q. Now, this picture of your house here – is your house pretty open?

A. Yes, it's all open.

Q. And could everybody have been within your sight and you just didn't look for him?

A. Yes, I was busy looking at Chet.

Q. But he was close enough, you heard him very clearly?

A. Yes.

Q. I'm going to take you back to that time that he walked back out of the bedroom, out to the bar by the [p. 29] kitchen and you were at that location and this comment that you've now mentioned was made, "I don't have to stay in that bed. I can go to your bed."

Was that statement made in the vicinity of George?

A. Yes.

Q. And right after that statement was made, did George get up –

A. Yes.

Q. – right after that statement.

A. Yes.

Q. And did he make any statements at that time telling Chet to leave his home?

A. Yes, he told him to get out of his house.

Q. And is that when this statement was made by Chet, "I'll take you right now," et cetera?

A. Yes.

Q. And did he – when you heard that statement, what did you do?

A. I grabbed a hold of Chet.

Q. How?

A. I had him by the front of his shirt.

Q. So you think he had his shirt on?

A. Yes.

Q. And you grabbed him, and what did Chet say?

[p. 30] A. He says that, "You can't make me leave. This is my sister's house, too."

Q. Okay. And is that when George went back to the bedroom?

A. Yes.

Q. Okay. And at that time did you tell Chet, "you'll have to leave"?

A. Yes. I tried to tell him to leave.

Q. And did he respond to your urging that he leave?

A. He said he didn't have to leave.

Q. Okay. Then I think I heard your testimony that you were positioned in such a way –

MR. KINCAID: May I approach the exhibit, Your Honor?

THE COURT: Yes, sir.

Q. (By Mr. Kincaid) You were positioned in such a way that you could look through what I think you called –

A. – the plant shelf.

Q. The plant shelf. Where is that?

A. By the living room.

Q. Right here that I'm pointing to (indicating)?

A. Yes.

Q. The plant shelf. This is a see-through, big, square window?

A. Yes.

[p. 31] Q. And you saw George walking by there?

A. Yes.

Q. Or coming by there?

A. Yes.

Q. Now, when you saw him come by, did he appear to be at a dead run to you?

A. I wouldn't say a dead run, no.

Q. So you don't remember really whether it was a slow or a fast, or a brisk walk?

A. No.

Q. You just don't think he was running?

A. I don't think he was running.

Q. Okay. And he came out into the area where you and Chet were located here, close to the dining room (indicating)?

A. More over toward the bar.

Q. That's this area right here (indicating)?

A. No, to the right.

Q. This is the bar (indicating)?

A. Yes.

Q. So he's more over in this area right here?

A. Yes.

Q. And you were going to go into the kitchen itself which is another area right here?

A. Really we weren't going anywhere. He was just [p. 32] shoving me back.

Q. Okay. And did he get away from you as you were holding on to him?

A. Yes, he kind of shoved me off to the side.

Q. And to the best of your memory, did he advance over to an area which would be towards the living room as you let go of him?

A. Yeah, he moved back this direction (indicating).

Q. Towards where George was coming out?

A. Yes.

Q. Do you know how close they got to each other before the shot went off?

A. Not exactly.

Q. From your own knowledge, from what you saw, do you know?

A. Well, from him coming around the edge of the plant shelf where he was, I would say probably about 10 feet or so.

Q. Maybe closer?

A. It could have been. I don't know what the distance is there in my house.

Q. Okay. The statement that, "I'll take you right now," was it ever said more than once that night?

A. I don't think so. I think just then.

Q. Now, to make sure I understood your testimony, [p. 33] you said as Chet was moving towards the area that you thought George was coming from when you let go of him, or when he got away from you?

A. Yes.

Q. And that's when you hear the words again, "Get out of my house," by George?

A. Yes.

Q. And then right after that you heard a shot?

A. Yes.

Q. Now, when you saw George through the window shelf there, you couldn't see the gun?

A. I didn't see the gun.

Q. So you don't remember him walking out with a gun aimed, walking over?

A. No.

Q. Between Chet and George, which is the biggest?

A. I'd say Chet's a little bigger than George.

Q. Taller?

A. Yes.

Q. By how much? Just estimate.

A. A couple of inches.

Q. And was he heavier than George?

A. Yes.

Q. Was he younger than George?

A. Yes.

[p. 34] Q. How much younger?

A. Fourteen years.

Q. Would you estimate Chet's weight to be over 200 pounds?

A. I'd say 200 or a little better.

Q. On this day in question, March 27th of 1999, had you just previous to that taken stitches out of Chet or helped him take stitches out?

A. No, I had been told that he had just had stitches taken out.

Q. But you didn't do that yourself?

A. No.

Q. And you didn't discuss those stitches in a fight with Chet just prior to this incident?

A. He had mentioned it, but I didn't pay much attention to what he said about it.

Q. Okay. This night in question, had you had so much to drink that you lost your recall of what happened?

Let me make that statement another – or the question another way: The night in question had you had so much to drink that you could not perceive what was going on there in front of you?

A. No.

Q. So you could see what was happening in front of you?

[p. 35] A. Yes.

Q. And did you feel you had good control of all your senses?

A. Yes.

Q. You were asked about Mr. Williams, about talking to any of the investigators. Do you recall telling them that you thought that Chet had threatened George before?

A. Yeah, there was something once upon a time. I don't remember what or when.

Q. Okay. You knew Chet pretty well. He was your brother, correct?

A. Well, he's my brother. I don't know.

Q. Would you have considered him to be a hothead?

A. Yes.

THE COURT: Mr. Kincaid, just a minute. I need to speak with my staff.

MR. KINCAID: Yes, sir.

THE COURT: I'm sorry, Mr. Kincaid. Go ahead.

MR. KINCAID: Okay.

Q. (By Mr. Kincaid) You've testified here today that Chet had made a statement that he could sleep in your bed. When that statement was made to you, did you feel that he wanted to sleep in your bed with you?

A. It – yeah, kind of, but I really didn't pay that much attention, you know, I think if I would have [p. 36] said yes he probably would have done that.

Q. Had Chet ever hit you physically?

A. No.

Q. Had you ever seen him hit other women?

MR. MCCOY: Objection.

A. No.

MR. MCCOY: It's been answered. I'll withdraw the objection.

Q. (By Mr. Kincaid) When this statement was made, "I'll take you right now or here," things to that effect that you've described, was Chet moving, trying to move towards George?

A. Yes.

Q. You had been drinking with your brother Chet hadn't you?

A. Yes.

Q. And when he drinks, does he get mean?

A. Yes.

Q. That night, as you were holding your brother, were you in fear that Chet was going to do harm to your husband George?

A. Yes.

Q. Yes?

A. Yes.

MR. KINCAID: Thank you.

[p. 37] THE COURT: Mr. McCoy, anything else?

MR. MCCOY: Yes.

REDIRECT EXAMINATION

BY MR. MCCOY:

Q. Your – you said that your brother Chet was 200 pounds or slightly over; is that correct?

A. I would guess that, yes.

Q. And I would guess that you are 70 pounds, at least, less than that?

A. Yes.

Q. – a fair statement?

He was big enough to put you aside easily, correct?

A. Yes.

Q. And you held your position between your brother and your husband George for a minute or more; is that a fair statement?

A. I don't know the time.

Q. You were holding your brother back, correct?

A. Yes.

Q. He towered over you, correct?

A. Yes.

Q. And he was roughly the same size as your husband?

[p. 38] A. Yes.

Q. As a matter of fact, he wasn't so big that he did not fit into your husband's shirt that night, correct?

A. The shirt was tight.

Q. Okay.

A. He kept popping open the snaps.

Q. You said that you didn't pay much attention to the statement that Chet made about sleeping in your bed, but yet you thought that he would have gone through with it had you consented? Why do you say that?

A. Because in the past week or so before then he had been calling me up on the phone and he was calling me little sweetie and just being more friendly than he used to ever be.

Q. Is there any other indication that you got from Chet than what you've told us today that would lead you to believe that he was serious about sleeping in your bed with you?

A. Could you say that again?

Q. Is there anything else, other than the fact that he had been calling you for a week before he was shot and calling you his sweetie and being more affectionate for the previous week that would lead you to believe that he wanted to spend time in your bed with you?

A. No.

[p. 39] Q. That's it?

A. Yeah.

Q. And your husband George didn't know anything about this previous week's phone calls, correct?

A. Probably not, no.

Q. You didn't tell him, correct?

A. Not that I remember.

Q. And as far as you know, the first time that your husband George ever heard anything like that was that night that he shot Chet, right?

A. Yes.

Q. You said that when Mr. Kincaid asked you about whether there had been previous fights between Chet and George that what there was something once upon a time you don't remember. What was that about?

A. They've argued. They've never had a fistfight.

Q. Or come close to having a fistfight, have they?

A. I can't really say if they were going to fight or not. They – it gets pretty verbal.

Q. Had you ever placed yourself between your brother and your husband before in order to settle – in order to cool a situation?

A. I've told Chet to settle down before, yes.

Q. All right. And was that because he was arguing with George?

[p. 40] A. Yes.

Q. How many times did that happen before March 29th?

THE COURT: Mr. McCoy, I've tried to be patient. This is a preliminary hearing on the charge of first-degree murder. We're not here to resolve affirmative defenses. We're here to determine whether it's available and whether there is probable cause to believe that a crime occurred.

I'm not going to address affirmative defenses and it's not within the scope of this hearing and this hearing is going to finish at five o'clock today and it's going to finish promptly and I think we're wasting a lot of time on issues that really are not germane to what we're trying to get done, so wrap this up.

MR. MCCOY: I will.

Q. (By Mr. Mccoy) How many times before March 27th had that situation occurred?

A. Arguing?

Q. Yes, where you've placed yourself between the two of them.

THE COURT: Does that make any difference for probable cause to prevail?

Apparently my message – I must be missing something. What difference does it make?

[p. 41] MR. MCCOY: Well, the difference that it makes is I'm going to be arguing to you, Your Honor, that the proof is evidence that Mr. Brawley committed the crime that we've charged him with.

THE COURT: And I understand that. And this would go to whether or not there really was a self-defense or an affirmative defense in this case because of prior hostilities between the victim and the defendant, prior arguments or prior tensions?

MR. MCCOY: I'm sorry, what was your question, Your Honor?

THE COURT: Does this line of questioning not go the issue of whether or not in the past there had been tensions between the defendant and Chet?

MR. MCCOY: It goes to that as well as the bail statute says, whether or not Mr. Brawley is a threat if he's allowed out on bond. If he's a threat to other humans if he's allowed out on bond, it has to do with his previous situations where violence occurred.

It will take me one or two questions, Your Honor.

THE COURT: I think you're stretching it well beyond the limit. Go ahead.

MR. MCCOY: Thank you.

Q. (By Mr. Mccoy) Mrs. Brawley, how many times [p. 42] before March 27th had that occurred where you had to put yourself between Chet and George in order to cool an argument?

A. Really just one other time that I thought there might be a real heated argument.

Q. How long ago was that?

A. It's been several years. I don't know just exactly.

Q. More than five?

A. Yeah, because we don't socialize with him very much. I don't see him often.

Q. You mentioned something about Chet having had stitches taken out. Did you see those stitches?

A. No, he had told me he had just had stitches taken out a few days before then or –

Q. When did he tell you that?

A. That night.

Q. The night that he was shot?

A. Yes.

Q. Where on his body were the stitches?

A. In his hand, I think.

Q. In his hand, but you're not sure?

A. No, I didn't pay any attention, I – like I – he just told me he had stitches taken out, he had been in a fight.

[p. 43] Q. Do you know who he had been in a fight with?

A. No, I didn't ask him.

Q. Your husband is in good health, yes?

A. Relatively, yes. He's got high blood pressure.

Q. He's able? He's strong? He has a job?

A. Yes.

MR. MCCOY: Thank you, Your Honor.

MR. KINCAID: Your Honor, if I may, instead of calling Ms. Brawley back, I have just a few questions on the bond issue.

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. KINCAID:

Q. Mrs. Brawley, who is your husband employed with?

A. URS, United Road Services.

Q. And what does he do?

A. He's an over-the-road truck driver.

Q. And how long has he worked for URS?

A. Originally this was Schroeder Auto Carriers, they just sold out to URS and it's been eight years for the same company.

Q. And who is his supervisor or boss?

A. Dale Schroeder.

Q. Has he worked for him there, then, at least [p. 44] seven, eight years?

A. Yes.

Q. And who are you employed by?

A. Arapahoe County.

Q. Okay. Prior to that, did he have a job with White and Pipkin?

A. Yes.

Q. How many years did he work there?

A. About twelve years.

Q. In one job?

A. Yes.

Q. And that was in the Byers vicinity?

A. Yes. He did different duties.

Q. So Mr. Pipkin is out of Byers/Strausburg area?

A. Yes.

Q. His past and present residency, where did you live the night this incident occurred?

A. 3120 Calhoun-Byers Road.

Q. How long had you been there?

A. November of '98.

Q. And that's near Byers?

A. Yes.

Q. You just bought a home there?

A. Yes. We just put in a modular.

Q. And how long had you lived there in that home?

[p. 45] A. We moved in in November.

Q. Okay. And you have a long-term mortgage on that home?

A. Yes.

Q. Before that, where did you live?

A. 468 Keen Avenue, in Byers.

Q. And how long did you live there?

A. Eight years, nine years – eight years.

Q. So you've been out in that community, then, at least ten years?

A. We've been out there for twenty-five years.

Q. So you've been in the Byers/Strausburg community for twenty-five years?

A. Yes.

Q. As far as his financial condition, do you know what he made when he worked for the over-the-road truck services?

A. Excuse me.

Q. Do you know his salary?

A. He makes somewhere around 50,000 a year.

Q. Okay. For you to maintain your living arrangements and your obligations, do you – are you dependent upon his income?

A. Yes.

Q. Are you available to assist him to get him to [p. 46] all of his court appearances on time if the court grants bail?

A. Yes.

Q. Would you do that?

A. Yes.

Q. Does George have a prior criminal record?

A. Not that I've ever been aware of.

Q. You've heard some statements that were made to you – or questions to you about George leaving?

A. Yes.

Q. Has there ever been any discussion that you're aware of by George with you or any conversations you're aware of about leaving the area because of this case or this trial?

A. No.

Q. And have you and he ever talked about moving to any other area?

A. No.

MR. KINCAID: No further questions. Thank you.

THE COURT: Mr. McCoy, any examination on those last points?

MR. MCCOY: No, Your Honor. Thank you. And thank you, Mrs. Brawley.

THE COURT: Ms. Brawley, you may step down.

People's next witness, please?

[p. 47] MR. MCCOY: Jerry Hankins.

THE COURT: Good afternoon, sir. Would you please raise your hand to be sworn.

JERRY HANKINS,

a witness herein, being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: All right, please be seated. Thank you.

DIRECT EXAMINATION

BY MR. MCCOY:

Q. Good afternoon, Mr. Hankins. Would you state your name for us, please, and spell your last name.

A. Jerry Hankins, H-A-N-K-I-N-S.

Q. Mr. Hankins, do you know George Brawley?

A. Yes, sir.

Q. Do you see Mr. Brawley in the court today?

A. Yes, sir.

Q. Would you point him out to us?

A. He's sitting at the table.

Q. In the blue jail uniform?

A. Yes, sir.

Q. Thank you. Did you go to George Brawley's house at 3120 Calhoun-Byers Road late on March 27th of this year?

[p. 48] A. Yes, sir.

Q. Why?

A. We had a phone call at the house from George's wife, Terry, stating that George had shot somebody.

Q. And that was the woman that just walked out of the courtroom?

A. I didn't notice.

Q. Blond-haired woman?

A. Yes.

Q. Did you take the phone call or did your wife take the phone call?

A. My wife did.

Q. Had you been at the American Legion in Byers earlier that night?

A. Yes, sir.

Q. Had your wife been there?

A. Yes, sir.

Q. Did you have anything to drink at the American Legion hall?

A. I had one drink with my dinner.

Q. Did you go to George Brawley's house after your wife received that phone call?

A. Yes, sir.

Q. When you got to George Brawley's house were you sober?

[p. 49] A. Yes, sir.

Q. When you got to George Brawley's house, was your wife sober?

A. Yes, sir.

Q. When you got to that house, was George Brawley sober?

A. I can't tell you for sure.

Q. Did you talk to him?

A. Not very long. I talked to him just a little bit and then proceeded to go out, and at the rescue squad I asked them to – I thought they needed the chopper.

Q. Did – during your conversation with George Brawley, did he understand your questions? Did he understand what you were saying?

MR. KINCAID: I'm going to object, asking what Mr. Brawley understood.

MR. MCCOY: I can rephrase it, Your Honor.

THE COURT: Go ahead.

MR. MCCOY: Thank you.

Q. (By Mr. Mccoy) Mr. Hankins, when you spoke with George Brawley, did you ask him questions?

A. Yes, sir.

Q. Did he respond to those questions in a manner which led you to believe he understood what you were asking him?

[p. 50] A. Yes, sir.

Q. Did the statements that he made to you during your conversation make sense to you?

A. Yes, sir.

Q. How long after your wife received the phone call from Tresia Brawley did you arrive at 3120 Calhoun-Byers Road?

A. Approximately five to seven minutes.

Q. And is that in Adams County, Colorado?

A. Yes, sir.

Q. Did you go to another building before you went the Brawley residence?

A. Yes, sir.

Q. Where did you go?

A. We stopped at the fire house and – to pick up surgical gloves for my wife.

Q. Did you work for the fire department?

A. Yes, sir.

Q. Did your wife work for the fire department?

A. Yes, sir.

Q. Were you and your wife the first ones out to the Byers – Calhoun-Byers Road house before other rescue personnel got there?

A. Yes, sir.

Q. Are you and your wife friends with Mr. and Mrs. [p. 51] Brawley?

A. Yes, sir.

Q. Did you ask George Brawley what happened when you got to George Brawley's house?

A. No, I – we knocked on the door and they told us to come in, and George said that he shot him and that he would probably go to jail for a long time.

Q. Did George say why he shot him?

A. Not at that time.

Q. At any time?

A. No – well, they said later that he – they had an argument.

Q. Who said that?

A. George.

Q. George told you that?

A. Yes, sir.

Q. Did he tell you what the argument was about?

A. No, sir.

Q. Did he tell you that he was protecting his wife?

A. No, sir.

Q. Did he tell you that he was protecting himself?

A. Yes, sir.

Q. What did he say about that?

A. He said that he had – that the gentleman had threatened him.

[p. 52] Q. Did he say how he had been threatened by Chet?

A. Just that he was going to beat him up.

Q. Did George Brawley tell you how far away George was from Chet when George shot Chet?

A. No, sir.

Q. Did you see George and Chet at the Legion hall that night?

A. Yes, sir.

Q. Did there appear to be any problem between them while you were there?

A. No, sir.

Q. Was there a shell in the gun, in the chamber of the gun well, – well, let me ask you this first: Did you ever handle the gun that was used to shoot Chet Rankin?

A. Yes, sir.

Q. How did you come to have your hands on that gun?

A. I asked George where the gun was and he said he didn't know for sure at that time, so we both went into the bedroom and George found the gun and I said, "Well, you better hand it to me because you don't need to be holding it when the deputy gets there. And, unknown, I just automatically unloaded the weapon.

Q. How did you do that?

A. I ejected a shell and then I had to push the button to release two more shot – or shells.

[p. 53] Q. How many times – was it a pump-action shotgun?

A. Yes, sir.

Q. How many times did you have to move the slide backward and forward?

A. Probably four times.

Q. How many shells ejected from the gun?

A. Three, that I believe.

Q. Was the gun taken from you?

A. Yes, sir.

Q. By whom?

A. By an officer of Arapahoe County, Oliver.

Q. Is that Deputy Bill Oliver?

A. Yes, sir.

Q. After Deputy Oliver took the gun from you, what did you do?

A. I told Mr. Oliver that the shells – I had emptied the gun and the shells were laying on the bed, on top of the bed, and then we all proceeded out of the room and then I went out to help load the patient.

Q. Did George say anything else to you, Mr. Hankins, about why he shot Chet Rankin?

A. No, sir.

Q. Did Tresia say anything to you about an argument between Chet and George?

A. No, sir.

[p. 54] Q. Did she make any statements to anyone in your presence about why George shot Chet?

A. No, sir.

Q. How far away from where Chet was lying on the floor was the gun found when you went into the bedroom with George?

A. Oh, approximately, I'd say, maybe 20 feet.

Q. Is that – do you know whether or not that was where George had to go to get the gun in the first place?

A. I – I – no, I don't know for sure.

Q. I'd like you to look at this diagram, Mr. Hankins. I don't think you'll need to get up.

The diagram shows the front room of the Brawley residence as being about 16 feet wide and then more than

that to get into the bedroom. Does that sound – is that your basic recollection of how far away the bedroom was from the middle of the entryway of the house?

A. Probably so, yes.

Q. And then another 14 feet diagonal – in another direction to where Chet Rankin was laying on the ground?

A. Yes, sir.

Q. Is that your basic recollection?

A. Yeah, probably pretty close.

Q. All right.

Where was the gun when you actually found it?

[p. 55] A. George found it. I believe it was in the bathroom, in the bedroom.

Q. Did George say anything to you about Chet threatening to harm him?

A. Yes.

Q. What did he say?

A. He said that, "He was going to kick – he was going to kick the shit out of me." Excuse me.

Q. That's all right. I mean, I want you to tell it exactly the way it happened.

MR. MCCOY: Thank you. That's all I have.

THE COURT: Mr. Kincaid?

MR. KINCAID: Your Honor, I have no questions regarding the direct examination. I would like to

ask him a couple of questions about George's being in the community for bond purposes, if I may?

THE COURT: You may.

CROSS-EXAMINATION

BY MR. KINCAID:

Q. How long have you known George?

A. Approximately a little over twenty years.

Q. And have you lived in the same community with him for 20 years?

A. Yes, sir.

[p. 56] Q. And does he have a reputation for truth and honesty in your community?

MR. MCCOY: I object. That's not relevant for purposes of either preliminary hearing nor bond hearing.

MR. KINCAID: I'll withdraw the question, Your Honor.

THE COURT: All right.

Q. (By Mr. Kincaid) Are you aware of his character and reputation in the community?

A. Yes, sir.

Q. And what is that?

A. Could you repeat that question?

Q. Are you aware of his – let's talk about character. You know, whether he has good or bad character, are you aware of his character in your community?

A. Yes, he did have real good character.

Q. So he has a reputation for good character in your community?

A. Yes, sir.

Q. And is he known as a mild-mannered person?

A. Pretty much so, yes, sir.

Q. And it's from your knowing him and his representation, is he one that's kept his commitments when he's made them?

[p. 57] A. Yes, sir.

Q. Do you feel in your occupation and also knowing him whether he would flee the jurisdiction if he's placed on bond?

A. I don't believe so, sir.

MR. KINCAID: Thank you.

MR. MCCOY: May I have just a moment, please, Your Honor?

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. MCCOY:

Q. Mr. Hankins, do you remember talking to Detective Williams on Sunday the 28th of March?

A. Yes, sir.

Q. Do you remember him asking you questions about whether George had been in fights before?

A. Yes, sir.

Q. Do you remember telling him that he's probably been in a fight a couple of times?

A. Possibly, you know, just a couple of times that I know of, maybe.

Q. How many times, specifically, that you know of, Mr. Hankins?

A. I imagine two.

[p. 58] Q. Where did those fights occur?

A. I believe probably at the bar.

Q. At the bar in Byers?

A. Right.

Q. Is there more than one?

A. Yeah, that's all there is, one.

Q. Just one?

A. Yes.

Q. Did those fights involve weapons?

A. No, sir.

Q. And George is an over-the-road trucker; is that correct?

A. Yes, sir.

Q. How long ago were those two fights?

A. Oh, probably the last one might have been ten years ago or –

Q. All right. Thank you very much.

MR. MCCOY: No further questions, Your Honor.

MR. KINCAID: No questions.

THE COURT: All right. Mr. Hankins, you may step down. Thank you very much.

People's next witness, please?

MR. MCCOY: Carolyn Hankins.

THE COURT: Good afternoon. May I ask you please to raise your hand to be sworn.

[p. 59] CAROLYN HANKINS,

a witness herein, being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: All right, please be seated, ma'am.

DIRECT EXAMINATION

BY MR. MCCOY:

Q. Good afternoon, Mrs. Hankins. Thanks for coming in.

Would you tell us your name and spell your last name.

A. Carolyn Hankins, H-A-N-K-I-N-S.

Q. Are you Jerry Hankins' wife?

A. Yes, sir.

Q. Were you with Jerry March 27th when he went out – when the two of you went out to the Brawley's house on Calhoun-Byers Road sometime after ten o'clock?

A. Yes, sir.

Q. Were you the one who answered Tresia Brawley's telephone call to you?

A. Yes, sir.

Q. About what time did that call come to your house?

A. Between twenty after ten and 10:30, something like that.

[p. 60] Q. What did she say to you?

A. She asked me how to get the ambulance out to her house and I said, I gave her the phone number, and I said she had to call the sheriff after that.

Q. All right. How long was it from the time that you spoke with her on the phone until you got to her house

A. Maybe ten minutes.

Q. Were you and your husband the first ones that got to the house after the shooting?

A. Yes.

Q. Tell us what you saw when you got there.

A. Well, I knocked on the back door and walked in and there's a body laying on the floor and I just walked over and went to talk to Terry to see how she was doing. That's what I saw.

Q. Did Terry tell you what had happened?

A. No.

Q. Did she – did you ask her what had happened?

A. I don't think so. I asked her how she was. I don't believe that I asked her what happened.

Q. Did you ask her how Chet had gotten shot?

A. No.

Did she tell you how Chet had gotten shot?

A. No.

[p. 61] Q. Did you come to understand that it was George that shot Chet?

A. Yes.

Q. Do you see George in the courtroom?

A. Yes.

Q. Would you point him out?

A. Right there (indicating).

Q. In the blue uniform?

A. Yes.

Q. How did you come to understand that George shot Chet?

A. Well, when she called me she said George shot somebody.

Q. All right –

A. – that's all, you know.

Q. Did – any time that night, did Terry say to you or anyone else whether there was an argument between George and Chet?

A. I don't know there was an argument. They just said they were trying to get him to go home and he wouldn't go.

Q. Who said that?

A. That's what Terry said, they were trying to get him to go home and he wouldn't leave.

Q. Did she say that there was any other argument or [p. 62] any other threats made?

A. No. No.

Q. Did she say that there were any other comments made which made either she or George angry?

A. I don't know what Chet said because nobody said anything about what he said.

Q. And you – you were not drinking that night, correct?

A. Yes. I wasn't.

Q. You would remember if Terry had told you that Chet had made some comment to her, wouldn't you?

A. Yes.

Q. And she told you nothing other than what you've already told us here today in court about what happened?

A. That's all I can remember she told me.

Q. Okay. Did she say whether Chet threatened George physically?

A. Something was said by somebody, her or him, Chet threatened to beat George up, but. . . .

Q. Did George say that?

A. I think so.

Q. All right.

Did George say anything else about the reason for the shooting?

A. No.

[p. 63] Q. You are certain of that?

A. Yes.

Q. Did you help with taking care of Chet?

A. Yes, a little.

Q. How long were you there?

A. From the time we showed up until they told us to go over to Adams County cops to take statements until 2:30.

Q. All right. Other than what you've told us already today, Mrs. Hankins, did George say anything else about what happened?

A. No.

Q. Did Terry say anything else about what happened?

A. No.

Q. Okay. Do you remember telling Detective John Williams – this man who is seated behind the computer monitor – on Sunday morning, after midnight, that George said that he threatened to beat the hell out of him and he wasn't going to let him?

A. I might have. That's what I mean when he said he was going to hit him, you know, beat him up.

MR. MCCOY: Okay. Thanks very much, Mrs. Hankins.

Thank you, Your Honor.

[p. 64] CROSS-EXAMINATION

BY MR. KINCAID:

Q. Good afternoon, Mrs. Hankins.

A. Hello.

Q. You stated that you went over about 2:30 and you gave a taped interview to somebody from the – that was investigating this matter?

A. Yes.

Q. And have you had occasion to read that taped interview since then?

A. No.

MR. KINCAID: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

Q. (By Mr. Kincaid) I've showed to the district attorney what is the interview furnished in discovery which is typed up, and I want to call your attention here on page 2 there's a question here, and it's the investigator said, "Sure. What – what was said to you then?" And K.H., that's you, "I don't know. George just – you know, he threatened me and I shot him."

Do you remember that? Do you remember making that statement that you heard George say that?

A. Yeah.

[p. 65] Q. Okay. And then you went further and where they're asking you why he shot this guy, do you see that? And was your answer, "George said he threatened to beat the hell out of him and he wasn't going to let him"?

A. Yes.

Q. So that statement was made that night by George?

A. Yes.

MR. KINCAID: No further questions. Thank you.

MR. MCCOY: I don't have anything further, Your Honor.

THE COURT: Okay. May Mrs. Hankins be excused?

All right, Ms. Hankins, you may step down. Thank you very much.

MR. MCCOY: Deputy John Egan.

JOHN EGAN,

a witness herein, being first duly sworn in the above cause, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MCCOY:

Q. Would you state your name, please, and spell your last name.

A. John Egan, E-G-A-N.

Q. Are you a reserve sheriff's deputy with the Arapahoe County Sheriff's Department?

[p. 66] A. I am.

Q. Were you on duty on March 27th, 1999?

A. I was.

Q. Were you working in conjunction with two other regular sheriff's deputies that night, Bill Oliver and Tammy Twombly?

A. Yes, I was.

Q. Did you go out to 3120 Calhoun-Byers Road sometime after ten o'clock that night?

A. Yes, I did.

Q. Is that in Adams County, Colorado?

A. Yes, it is.

Q. Why did you go out there?

A. Received a radio call from the Arapahoe County Sheriff's dispatch evidently about a 911 hangup and initially I was going to cover the female officer and then Deputy Oliver was closer so he took the call. A short time later we had a second 911 call that indicated there had been a shooting address in Byers, Colorado, in Arapahoe County.

Q. Was that because there was a phone mixup on where the call was coming from?

A. Yes. I believe that there had been a problem with the enhanced 911 system, that the phone number had

cross-referenced to a Keen Avenue address and the people [p. 67] had moved and kept the same phone number and came up on the Calhoun address.

Q. So the 468 Keen address, it is in Arapahoe County, correct?

A. That address is.

Q. And the 3120 Calhoun-Byers Road, is this in Adams County?

A. That's correct.

Q. So the – when I first called – what I mean, it was believe by the phone people or dispatch people that the call was coming from Arapahoe County?

A. In Byers, yes.

Q. All right. And that was how Arapahoe County first ended up at 3120 Calhoun-Byers Road?

A. Ultimately how we ended up there, yes.

Q. All right. Is it customary out there in Byers, which lies both in Adams and Arapahoe counties, for each sheriff to cover the other department's side of the line?

A. That's correct, as well as State Patrol.

Q. All right. Did – did Deputy Twombly and Oliver get there before you did, at the same time as you did?

A. Same time, but Oliver was the first car to pull in the driveway, Twombly the second car, and I was the third car.

Q. Did you go into the house?

[p. 68] A. Yes, I did.

Q. And when you got into the house, did you see George Brawley?

A. Yes.

Q. Do you see Mr. Brawley in court?

A. Yes, I do.

Q. Would you point him out.

A. He's seated at the defendant's table with the blue jumpsuit and slightly balding on the forehead.

Q. Were you in Mr. Brawley's presence at the time that he made statements?

A. Yes.

Q. Tell us what those statements were.

A. He indicated, essentially, that he had got in – he had shot the fellow in the house and that was a result of what had occurred, because the fellow in the house had threatened to kick his ass that evening and several times previous to that and that he had had enough and that he shot him.

Q. All right. Did George Brawley appear to you, from what you saw, to be coherent?

A. Coherent but he had been drinking.

Q. All right. Did you speak to George Brawley?

A. Yes, I did.

Q. Did he answer your questions?

[p. 69] A. Yes.

Q. Did he answer your questions intelligently, in a fashion that you – led you to believe he understood what you were asking?

A. Yes, he did.

Q. Did he tell you he had lost his temper?

A. Yes.

Q. And that he had had too much to drink that night?

A. Yes.

Q. Did you or one of the other Arapahoe counties place – Arapahoe County Deputies place Mr. Brawley under arrest?

A. Yes, Deputy Twombly did after she walked with him outside the residence to her patrol car.

Q. Did she then relinquish custody of Mr. Brawley to you?

A. Yes.

Q. And did you then give Mr. Brawley to Deputy Ron Rusk of the Adams County Sheriff's Department shortly after that?

A. Yes, I did, yes.

Q. Thank you. Did you see Deputy Bill Oliver come out of the bedroom with a shotgun in his hand?

A. Yes.

[p. 70] Q. Do you know from whom he took that shotgun?

A. No.

Q. What did Deputy Oliver do with the shotgun?

A. When Deputy Twombly walked out and I walked out, he was behind me and he walked over to his patrol car and put the shotgun in his patrol car. I got a question. You asked me about the shotgun. Are you referring to: Did I actually see what happened or hear what happened? You're talking about the shotgun, where he got the shotgun.

Q. No, my question was: Did you see Deputy Oliver come out of the bedroom with the shotgun?

A. Yes.

Q. And did you see him put that shotgun into his car?

A. Yes.

Q. All right. Did Mr. Brawley ever make any statement in your presence to anyone that he was protecting anyone other than himself?

A. No.

MR. MCCOY: Thank you. That's all I have, Your Honor.

THE COURT: Mr. Kincaid?

[p. 71] CROSS-EXAMINATION

BY MR. KINCAID:

Q. Good afternoon, Mr. Egan. I've got very short questions.

A. Sure.

Q. Do you remember if Mr. or Mrs. Brawley that night indicated to you that they thought Chet – or Chester Rankin had a criminal history?

A. Yes, Tresia did. in fact, I think her words were that he had an extensive criminal history.

Q. Tresia told you that?

A. Yes.

MR. KINCAID: No further questions.

MR. MCCOY: Nothing, Your Honor.

THE COURT: You may step down, Officer Egan. Thank you.

THE WITNESS: Thank you.

MR. MCCOY: Deputy Ron Rusk.

RON RUSK,

a witness herein, being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: All right, please be seated, sir.

[p. 72] DIRECT EXAMINATION

BY MS. FLANNIGAN:

Q. Deputy, could you please state your name and spell your last name for the record?

A. Deputy Ron L. Rusk, R-U-S-K.

Q. And you are currently employed with the Adams County Sheriff's Department?

A. Yes, I am.

Q. And were you working or were you on duty on March 27th of this year?

A. Yes, I was.

Q. Were you dispatched to 3120 Calhoun-Byers Road?

A. Yes, I was.

Q. And why were you dispatched there?

A. Report of shots fired. A person was hit.

Q. And how far away were you when you received that dispatch?

A. When that call came out I was about five miles away.

Q. Were you, in fact, the first Adams County deputy on scene?

A. Yes, I was.

Q. What did you do when you got there?

A. When I arrived on scene, there were already two [p. 73] Arapahoe County Sheriff's Deputies on scene. They had a person later identified to me as George Brawley in custody in their vehicle.

I asked them was there any other suspects that I had to be aware of. They said no, that they had the suspect in custody and they had the weapon secured.

Q. What did you do after you got this information?

A. I then assisted the Arapahoe County Sheriff's Deputies in bagging the defendant's hands, both his right hand and his left hand with brown paper bags so we could perform a test on his hands later. And at that time I placed the defendant in the backseat of my patrol car.

Q. Did you then get in your patrol car?

A. Yes, I did.

Q. What happened after both you and the defendant were in your patrol car?

A. I was in the front seat starting the custody report for Mr. Brawley and while I was filling out the custody sheet I had his driver's license, I was taking the information off of it, he made several open statements to me.

Q. Were these in response to any questioning by you?

A. No, they were not.

Q. What did he say to you?

[p. 74] A. He stated, "He made lewd suggestions to my wife. It pissed me off." He also stated the defendant –

or the victim said he was going to whip his ass and that he was too old and he – for anybody to whip his ass.

Q. Who was too old?

A. He stated that he was too old.

Q. So the defendant was referring to himself?

A. Yes.

Q. Did he say anything else?

A. He also stated, "What am I going to do, call a lawyer every time something like this happens? I know what I did was wrong."

Q. When he told you that the victim had said, "I'll whip your ass," did the defendant say that he said anything in response to that?

A. Yes, he did. He said, "I'll get a gun and shoot your ass."

Q. As you were sitting there in the car could you determine that the defendant had been drinking at all?

A. Yes, I could.

Q. And how could you tell that?

A. He had the strong smell of alcohol on his breath, slurred speech, and by looking at his eyes you can see that they were bloodshot and watery.

Q. Okay. Now, in spite of that fact, did he appear [p. 75] to understand what was going on around him?

A. Yes, he did.

Q. Did you ask him any booking questions at that time as you were filling out the custody paperwork?

A. I'm sorry?

Q. Did you ask him any questions regarding the custody paperwork that you were filling out?

A. The only questions I asked him: Is this the correct address, date of birth, age? I asked about any scars, marks, tattoos, just standard questions for our custody form.

Q. Did he appear to respond appropriately and seem to understand what you were asking?

A. Yes, he did.

Q. Okay. Now after you were done with the custody report, did you ever transport the defendant somewhere?

A. Yes, I did. I transported him to our patrol division.

Q. And as you were en route, did he make any statements while you were driving there?

A. He continued with the same kind of statements, stating he – the victim kept threatening to beat him up, that he's too old to be beat up. He also made this comment that the victim made lewd suggestions to his wife and that the victim tried to get in bed with his wife, he [p. 76] said, and that pissed him off.

He then said, "I got my shotgun," and at that time the victim said to him, in his words, "What the fuck are you going to do with that?" And he said, "I shot him."

Q. What did you do once you got to the substation?

A. When we got to the substation, I was instructed by my sergeant, Sergeant Maple, of three things that I had to do, one was call an ambulance for them to do a blood draw on Mr. Brawley. I was also to take his – all of his clothing and book them into evidence, and that Deputy Reigenborn, who was on scene on patrol, too, was to perform a gunshot residue test.

Q. Did the defendant make any statements while these three things were being accomplished?

A. He – he stated he did not wish to participate in the blood test without the presence of a lawyer.

Q. What did you say in response?

A. We told him we understood his comment, but at this time it was mandatory. We were taking the blood test and we would so note it and he could contest it at a later time.

MR. KINCAID: I'm going to object to the line of questioning on the blood test. Your Honor, I don't see the relevancy in a probable cause hearing.

[p. 77] MS. FLANNIGAN: That was my last question along those lines, Your Honor.

THE COURT: I'll just [sic] trying to think whether it would be relevant. Why would it be relevant?

MS. FLANNIGAN: Your Honor, they were just going to [sic] any statements the defendant made regarding what had happened that evening and I just elicited the response from the officer.

THE COURT: I'm going to sustain the objection and disregard the stuff about the defendant electing not to take the blood test or trying not to.

Next question?

Q. (By Ms. Flannigan) At any point – at the patrol car when you were doing the custody report or on the way back to the substation, did the defendant make a statement, "I didn't want to shoot him but he pissed me off?

A. That statement was made at patrol, and I don't mean – I have it written down, but he did make the statement, "I didn't want to shoot him but he pissed me off." It was in my presence and that of Deputy Reigenborn during the time frame that we're going to be doing the GSR kit and the blood draw and the – taking his clothes for evidence.

MS. FLANNIGAN: Thank you. Nothing further at [p. 78] this time.

THE COURT: Mr. Kincaid?

CROSS-EXAMINATION

BY MR. KINCAID:

Q. Good afternoon, Mr. Rusk.

A. Good afternoon.

Q. This last statement of, "I didn't want to shoot anybody. He pissed me off," is that also followed with a

further statement that no one is going to beat on him because he's too old?

A. Yes.

Q. Now, you transported him. Did you interview him any time after that, after he was transported?

A. I did not interview him at all, sir.

Q. Okay. When he was talking to you about Chester Rankin making lewd suggestions to his wife, did he also tell you that Chester Rankin made the statement, "I will whip your ass," and after that he said, "I'll shoot your ass"?

A. Yes, he did.

Q. And did he also state that he was too old, he couldn't whip him?

A. Yes, he did.

Q. Did he also tell you that Chester Rankin tried [p. 79] to go to bed with his wife?

A. He made the statement. Yes, he did make that statement.

Q. Did he also tell you that through this whole incident that Chester Rankin kept threatening to whip him while they were talking?

A. He didn't make that statement, no. He said that the victim had made several threats to whoop up on him but he didn't put it into a certain time frame.

Q. Did he also tell you that night that he didn't have time, the police could not have got there in time before he would have been whipped by this man?

A. He didn't – the statement he made was, "If I would have called the police, he would have beat my butt" – or "beat my ass by the time you guys would have arrived."

MR. KINCAID: No further questions.

THE COURT: All right. Ms. Flannigan?

MS. FLANNIGAN: Nothing further, Your Honor.

We'd ask that he be excused.

THE COURT: All right. Officer, you may step down. You're free to go.

All right, People's next witness?

MR. MCCOY: Linda Knutson.

THE COURT: Good afternoon. I ask you to please [p. 80] raise your hand to be sworn.

LINDA RANKIN,

a witness herein, being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: Please be seated.

Are we going to get something new?

MR. MCCOY: Yes.

THE COURT: Please proceed.

DIRECT EXAMINATION

BY MR. MCCOY:

Q. Would you state your name, please.

A. Linda Rankin.

Q. Do you also go by Knutson?

A. That was my married name before we got – I took my maiden name back.

Q. Okay. So you now –

A. I just go by Rankin.

Q. Okay. Ms. Rankin, have you spoken with your sister Tresia since March 27th, 1999?

A. Yes, I have.

Q. Have you talked to her about her knowledge of what George Brawley's intentions are if he's released from custody?

A. What she – she – what she told me, I think, [p. 81] was mainly – I don't know if she had talked to him yet. I don't think she had – but what she felt, she had said that – well, she was so upset that morning when I saw her and I asked her what she was going to do and she said she didn't know but she said – she thought if George got out of jail, he was going to go to Texas and that she was going to, – I asked her, I said, "Well what are you going to do? She said, "I'm going to stay here." She says, "I

wouldn't go to Texas," but she told me that two or three times.

Q. Did you talk to your sister Terry – how did you spell Terry's first name?

A. Tresia. Her name is Tresia, T-R-E-S-I-A.

Q. Terry?

A. Terry, T-E-R-R-Y.

Q. Tresia is T-R-E-S-I-A?

A. Yes.

Q. All right. Did Terry tell you about what happened at the time of the shooting?

A. Yes, she did.

Q. What did she tell you?

A. Well, she told me that they had gone out to an appreciation dinner for her but –

Q. Let me interrupt you for just a second.

A. Okay.

[p. 82] Q. I'm – the only thing I'm talking about is the minutes –

A. Oh, what happened.

Q. Right around the shooting and what George Brawley did.

A. Okay. She told me that Chet and George were arguing and George was – she told me George was sitting on the couch and Chet was in the middle of the living

room and they were arguing. She told me she couldn't remember about what. She went up to Chet and asked Chet to, please, no arguing or fighting in the house, and Chet said okay.

Terry said that she turned around and went into the kitchen and she looked and saw George get up off the couch and go in the bedroom, and she said the next thing she heard was a gun being cocked and then the fire of the gun and she turned around and looked and Chet was laying on the floor. But she told me that she couldn't believe how calmly George just got up and went into the bedroom, and she told me this three or four times. She was really upset and –

Q. Did you ask Terry why George shot Chet?

A. I asked her on numerous times why they were arguing or what they were arguing about, and she told me that she didn't know what they were arguing about. I [p. 83] never – she never did tell me.

MR. MCCOY: That's all I have. Thank you.

CROSS-EXAMINATION

BY MR. KINCAID:

Q. Is it Ms. Rankin?

A. Mrs.

Q. Mrs. Rankin. Good afternoon.

Now, you have known George Brawley and his wife. She goes by Terry and not Tresia?

A. Yes, Terry.

Q. You've known George and Terry for a long period of time, haven't you?

A. Yes.

Q. And you've known everybody in the community for where they are for twenty years?

A. At least.

Q. At least. And also George is an on-the-road driver in his occupation. You know that he drives, like, down to Texas and back?

A. Yes, I do.

Q. Hauling cars?

A. Uh-huh.

Q. You knew that?

A. Yes. Yes.

[p. 84] Q. Now, I want you to tell me, you used the words, "When George got out of jail." When Terry used them – you said Terry said, "When George got out of jail he was going to go to Texas." Did she use any other words other that than? [sic]

A. She said if George got out of jail. If George got out, she probably wouldn't ever see him again because she wouldn't go to Texas with him and that he would not come back.

Q. Did she say any other words than that?

A. No. That's how she put it, numerous times, and she told me.

Q. And you are – you are Chester Rankin's sister?

A. Yes.

Q. Now, that very well could have meant if he gets out – when he get out of jail because of this offense and he has to do something with his life, he would go to Texas; isn't that correct?

A. It could be, yes.

Q. Okay. And you've never known George Brawley to run and hide from anything in the 20 years you've known him, have you?

A. No.

MR. KINCAID: No further questions.

THE COURT: Mr. McCoy?

[p. 85] MR. MCCOY: Thank you.

REDIRECT EXAMINATION

BY MR. MCCOY:

Q. Mrs. Rankin, have you ever heard George Brawley make statements about whether or not there's a jail that can hold him?

A. Yes, years ago. Just in conversation.

MR. KINCAID: I'm going to object, Your Honor. It's so far and irrelevant and remote. It has absolutely no tie into any evidence in this case unless it's further established.

THE COURT: Objection is overruled.

Q. (By Mr. Mccoy) How many – how long ago did you hear George Brawley make comments about whether or not there's a jail that can hold him?

A. It was quite a few – I'd say probably seven, eight years ago. I remember when I – we were at their house, we were just all sitting around talking and, I don't know, we were talking about IRS stuff that my husband and I were going through and just talking and he – he had made the comment that there was no jail that could keep him, that he would not – he would not spend any time in jail.

MR. MCCOY: That's all I have. Thank you.

[p. 86] THE COURT: All right, you may step down, ma'am. Thank you.

MR. KINCAID: I just have one question.

THE COURT: All right, go ahead.

RECROSS-EXAMINATION

BY MR. KINCAID:

Q. This comment that you said about him being in jail, you know that it's at least seven or eight years ago?

A. I'm pretty sure, yeah, about seven years ago.

Q. And it could be more years than that?

A. I don't believe so.

Q. You've known him for twenty years, haven't you?

A. I've known him for twenty-five years.

Q. Where was it said? Where did he live?

A. It wasn't at the house. It was at the bar.

Q. Which bar?

A. The bar in Byers.

Q. The Spike?

A. Yes.

Q. And you were there?

A. Yes.

Q. And you were drinking?

A. I wasn't drinking, no.

[p. 87] Q. And you can remember seven years ago what was said at that bar?

A. Yeah, I do remember parts of the conversation, and, you know, what we were talking about at the time because my husband and I were – were talking about some IRS stuff that we were going through and it just – you know, the conversation just kind of came up about lawyers and jail and, you know, just basic talk.

Q. Did he tell you that if he was ever arrested and placed in jail, that he would break out of jail?

A. No, he never told me that, no.

Q. Okay. And did he – could he have told you that he would not like to go to jail?

A. He didn't put it that way, no. He said there was no jail that could hold him, that would hold him.

MR. KINCAID: No further questions.

THE COURT: Anything else, Mr. McCoy?

MR. MCCOY: No, Your Honor.

THE COURT: You may step down, Ms. Rankin. Thank you. All right, People's next witness?

MR. MCCOY: Detective John Williams.

JOHN WILLIAMS,

a witness herein,. being first duly sworn in the above cause, was examined and testified as follows:

[p. 88] DIRECT EXAMINATION

BY MR. MCCOY:

Q. You are Detective John Williams of the Adams County Sheriff's Department; is that correct?

A. Yes.

Q. Detective Williams, did you attend an autopsy on the body of Chester Rankin?

A. Yes, I did.

Q. When was that autopsy?

A. I think it was, I think, around 3:30, March 30th.

Q. Do you recall who was present there?

A. Dr. Robert Deters, some personnel from the Adams County Coroner's Office and a lab tech from my department, some other members.

MR. MCCOY: May I go to the witness, Your Honor?

THE COURT: Yes.

MR. MCCOY: I'm going to hand you a photograph, the back of which has been marked as People's Exhibit Number 2. Detective Williams, do you recognize what that's a picture of?

A. Yes, I do.

Q. What does that portray?

A. It's a photograph of Chester Rankin at the [p. 89] autopsy.

Q. And is that a fair and accurate portrayal of the way he looked and of the man that you saw the autopsy being performed on?

A. It does.

Q. And is that the same Chester Rankin who was born June 19th, 1959 and was shot at 3120 Calhoun-Byers Road on March 27th, 1999?

A. It is.

Q. I'm going to ask that the Court accept the photograph marked People's Exhibit 2.

THE COURT: Mr. Kincaid?

MR. KINCAID: No objection.

THE COURT: Two is admitted. Here you go.

(Whereupon, People's Exhibit 2 was then admitted into evidence.)

Q. (By Mr. Mccoy) Did you speak with Dr. Deters about what caused Chester Rankin's death?

A. Yes, I did.

Q. What did he tell you?

A. He told me that Chester Rankin died of a single gunshot wound to the abdomen caused by shotgun.

Q. Did he say that the gunshot had almost completely cut the iliac artery of Chester Rankin and that that was what caused him to bleed to death?

[p. 90] A. Yes, he did.

Q. Did you speak with Tresia Brawley during the course of your investigation?

A. I did.

Q. Did she make statements here today in court which are inconsistent with the statement that she made to you on March 28th, 1999, at about 1:30 in the morning?

A. Yes.

Q. Did you ask her about whether or not there had ever been arguments between George Brawley and Chet Rankin?

A. Yes, I did.

Q. What was her response?

A. She replied that's why she was so surprised that the shooting took place, because there had never been any problems between the two of them. I asked her if there had been any argument or heated arguments and she said no, none in the last twenty-five years.

Q. Did she say how far away she was from Chester Rankin when she heard the shot ring out?

A. She didn't give me a distance but she did tell me that she was in the kitchen with her back towards the dining room area.

Q. Did she say where Chester Rankin was when Chester Rankin got shot?

[p. 91] A. Yes.

Q. What was her – what did she tell you?

A. She said Chester was standing over near the bar that divides the kitchen and dining room area.

Q. Did she ever mention to you, Detective Williams, any comments that were made by Chet Rankin which she found disturbing?

A. No.

Q. Did she ever mention to you any comments made by Chet Rankin which George Brawley seemed to find disturbing?

A. No.

Q. Did she tell you about the argument that was occurring – that had occurred between George Brawley and Chet Rankin?

A. She just stated that they were arguing and she didn't know what over.

Q. How far – have you been out to the house at 3120 Calhoun-Byers Road?

A. Yes.

Q. And did Tresia Brawley tell you where the shotgun that her husband used to shoot Chet Rankin was normally kept?

A. Yes.

Q. Where did she say it was kept?

[p. 92] A. Located in the bedroom, the lower right-hand of that diagram.

Q. Approximately how many feet away from where Chet Rankin was found would the gun have been, according to what Tresia Brawley told you?

A. To and from – to the bedroom and from the bedroom it would have been over 30 feet.

Q. All right.

MR. MCCOY: No further questions. Thank you.

THE COURT: All right, Mr. Kincaid?

CROSS-EXAMINATION

BY MR. KINCAID:

Q. Good afternoon, Mr. Williams.

A. Good afternoon.

Q. You did an investigation, you attended the autopsy, you've talked with Dr. Deters, you've made statements today of what he's told you, correct?

A. Yes.

Q. And didn't your investigation reveal that when the gun went off it was approximately 7 feet from Chester Rankin?

A. Yes.

Q. Where in the body was the wound inflicted?

A. It would have been on the left side of the [p. 93] abdomen.

Q. Could you maybe stand and show the Court where that would have been had you pointed?

A. Right in here (indicating).

Q. So you're pointing to your left side. About how many inches in from the side of your chest or your side? About five inches in?

A. Maybe four.

Q. Four inches in?

A. Approximately.

Q. And was the shot inflicted down a little bit lower than that?

A. It could have been, yes.

Q. At around the belt line?

A. I don't think quite. The belt line was somewhere –

Q. Just a little bit above the belt line?

A. Yeah.

Q. So it was three to four inches in and close to the belt line on the left-hand side?

A. Approximately, yes.

Q. Did you check the rifle for fingerprints of Chester Rankin?

A. It hasn't been done yet. It was a shotgun.

Q. You took Chester Rankin and worked with Dr. [p. 94] Deters' ChemaTox Laboratory to determine the blood alcohol level of Chester Rankin, didn't you?

A. Yes.

Q. What was it?

A. It was – they did a vitreous blood and urine and I don't remember which was what, but one of them was .26.

Q. So the blood alcohol level – blood alcohol level was .26 of the deceased?

A. Yes.

Q. And you also found methamphetamines in the deceased body, didn't you?

A. Yes.

Q. Are you the officer basically heading this investigation?

A. Yes.

Q. You're the officer in homicide?

A. Yes.

Q. So you've read all the statements of all these people and you've heard all that were given today?

A. Yes.

Q. So you've heard Terry's statements that she's made to various different people in this investigation?

A. Heard what she said today in court and I've heard what she told me and her sisters.

[p. 95] Q. And you've heard what George said as he was sitting in the car or otherwise about being threatened and the lewd comments?

A. Yes, through Officer Rusk.

Q. And Terry was not present when he made those statements, was she?

A. No.

Q. Now, Terry, you interviewed her and taped the interview, didn't you?

A. Yes.

Q. And she told you that Chester Rankin had threatened her husband by saying, "I'll take you right here, right now"?

A. Yes.

Q. And she also told you that she was standing in front of Chester at the time, had him by the shirt and said, "Chet don't do this. You don't need to do this"?

A. Yes.

Q. She told you that?

A. Yes, sir.

Q. She also told that you George has never threatened anybody with a gun before, didn't she?

A. Yes.

Q. And she told you that when her brother gets drunk he gets mean. Did she tell you that?

[p. 96] A. Yes.

Q. And that he likes to pick fights when he gets drunk?

A. Yes.

Q. She told you that Chet told George that he, Chet, was going to kick George's ass before George went and got the gun?

A. She may have. I don't specifically recall that.

MR. KINCAID: No further questions.

THE COURT: All right. Mr. McCoy?

REDIRECT EXAMINATION

[p. 96] BY MR. MCCOY:

Q. Detective Williams, did Dr. Deters tell you that Chet Rankin was 7 to 10 feet away from the end of the shotgun barrel when he got shot?

A. Yes.

MR. MCCOY: Thank you.

That's all I have, Your Honor.

THE COURT: All right. You may step down, sir.

People's next witness, please?

MR. MCCOY: I don't have any further witnesses, Your Honor.

THE COURT: Does the defendant intend to call witnesses?

[p. 97] MR. KINCAID: Yes, Your Honor.

I will not be calling defendant, but I do have his employer I'd like to call and I do have some letters from people in this community that they've written.

I would show them to the DA and I would like for the Court to see these.

While he's doing that, I'll go get my witness, Your Honor.

THE COURT: All right.

DALE SCHROEDER,

a witness herein, being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: All right, please be seated, sir.

DIRECT EXAMINATION

BY MR. KINCAID:

Q. For the record, state your full name, please, and address.

A. Dale Schroeder, 4800 Weld County Road 51, Keenesburg, Colorado.

Q. And your employment?

A. I'm employed by United Road Service.

Q. Do you know George Brawley, seated to my immediate right?.

A. Yes, I do.

[p. 98] Q. How do you know him?

A. George has been in my employ for approximately the last eight years.

Q. What does he do for you?

A. He – he's the auto transport driver.

Q. And does that driving take him out of the state of Colorado?

A. Yes, pretty much. George traveled, pretty much, all over the Western United States.

Q. What does – is business – what does he do? What are his activities? How does he do it?

A. Well he, literally, loads the cars on the transport, drives them – drives to where they need to be delivered, unloads the transport, goes and gets a return haul, hopefully to Denver, and comes back and starts all over again.

Q. And how long have you worked with him?

A. Eight years.

Q. Did you know him before that eight years?

A. No, I didn't.

Q. You've gone through two different employers while he's been working with you?

A. This – we're with our second employer, yes.

Q. Okay. Now, as you know, George is in confinement. If this court enters an order that he is not [p. 99] to leave the state of Colorado, is there work available with your company for him to work and stay within the state of Colorado?

A. Yes, there is.

Q. Full-time work?

A. Yes.

Q. And what does George make? His income?

A. Um –

Q. Approximately?

A. Well, guessing somewhere between 50 and $60,000 a year.

Q. Will he continue to make that income if he's allowed to work while this trial is pending?

A. That would probably be reduced by maybe a few percentage points, 10 percent or so because the mile -the drivers are paid by the mile and it's hard to – it's hard to get the miles, obviously, if you never leave the state.

Q. Are you, then, his supervisor?

A. Yes.

Q. And these seven or eight years that you've worked with him as his supervisor, has he been dependable?

A. Yes.

Q. Has he been reliable?

A. Yes.

[p. 100] Q. Has he been honest?

A. Yes.

Q. You don't know anything about this case today, do you?

A. No.

Do you know yourself in these eight years of him having any enemy?

A. No. He got along with everybody at work extremely well.

Q. From your knowledge of knowing him and working with him and all the things you've said today, would you consider him to be a flight risk in this case if released on bond?

A. No.

MR. KINCAID: No further questions.

CROSS-EXAMINATION

BY MR. MCCOY:

Q. Mr. Schroeder, if the defendant's bond were set in the neighborhood of a quarter of a million dollars, do you have property that you could put up to secure that bond?

A. If I were asked to do so, you mean?

Q. Yes.

A. Yes.

[p. 101] Q. All right.

And would you be willing to put up enough property to secure a bond in the hundreds of thousands of dollars if you were asked to do so?

A. If I had the wherewithal, yeah. I don't know what it would take. I don't know. You're talking about some pretty big numbers there, but I don't know what percentage of that has to be cash or liquid or whatever. I don't know much about the bond process.

Q. What I'm getting at is: You've said that you don't think he's a flight risk, and I'm just asking whether you're willing to back that up with property of your own?

A. Yes, I am.

MR. MCCOY: That's all I have.

MR. KINCAID: I have no further questions of this witness, Your Honor.

THE COURT: All right, wait a minute.

You may step down. Thank you.

* * *

(End of proceedings requested by counsel.)

[p. 102] CERTIFICATE

I, Pamela J. Andasola, Certified Shorthand Reporter, Registered Merit Reporter, State of Colorado, in my capacity as Official Reporter of Division F, do hereby certify that I was present and recorded the above proceedings in stenotype and reduced the same to typewritten form, that if the labels affixed to the foregoing 101 pages are not tampered with that the foregoing 101 pages constitute a true and complete record of the proceedings had and done on April 20, 1999, before the Honorable Donald W. Marshall, Jr., in the Adams County District Court, Division F, State of Colorado.

Dated this 8th day of June, 1999.

/s/ Pamela J. Andasola
Pamela J. Andasola, CSR/RMR